

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

COMBUSTION STORE LIMITED,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 15-02
	)	
UNIGROUP WORLDWIDE, INC.,	)	
	)	
Respondent.	)	
_____	)	

**RESPONDENT UNIGROUP WORLDWIDE, INC.'S  
VERIFIED ANSWER AND AFFIRMATIVE DEFENSES TO THE  
COMPLAINT OF COMBUSTION STORE LIMITED**

Respondent UniGroup Worldwide, Inc. ("UniGroup"),<sup>1</sup> by and through its attorneys, hereby submits its Answer and Affirmative Defenses to the Complaint of Combustion Store Limited ("Combustion Store").<sup>2</sup> In support, UniGroup states as follows:

**ANSWER**

I. UniGroup lacks knowledge or information to either admit or deny the allegations contained in Section I of the Complaint and, for that reason, denies them.

II. UniGroup admits that it is a corporation engaged, *inter alia*, in the business of providing services as an ocean transportation intermediary ("OTI") as that term is defined by the

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<sup>1</sup> UniGroup was improperly named in the initial Complaint as "UniGroup Worldwide – UTS," however, the Commission issued an order amending the case caption to reflect UniGroup's proper name on October 9, 2015.

<sup>2</sup> Combustion Store first filed its Complaint on May 4, 2015, but then filed a Motion for Leave to Amend Complaint to Provide Additional Verification on July 17, 2015, attaching the now-operative Complaint as an exhibit. This was filed in response to certain questions UniGroup raised regarding the Complaint's verification. UniGroup filed a statement of non-opposition to the Motion to Amend. The Commission granted the Motion to Amend on October 9, 2015.

Shipping Act of 1984, as amended, 46 U.S.C. § 40101 *et seq.* (the “Shipping Act”). Further, UniGroup states that its principal place of business is One Worldwide Drive, St. Louis, MO 63026. The remaining allegations contained in Section II of the Complaint are denied.

III. UniGroup admits, to the extent it acts as an OTI, that it is subject to the personal jurisdiction of the Federal Maritime Commission (the “Commission”) pursuant to certain provisions of the Shipping Act. The remainder of the allegations in section III of the Complaint assert legal conclusions rather than averments of fact and UniGroup therefore neither admits nor denies the same. With regard to subject matter jurisdiction over the activities alleged in the Complaint, UniGroup disputes the allegations contained in Section III of the Complaint. UniGroup contests the subject matter jurisdiction of the Commission over the allegations in the Complaint and, for that reason, denies any remaining allegations contained in Section III of the Complaint.

IV. UniGroup denies the first line of Section IV of the Complaint and addresses the subparagraphs of Section IV as follows:

A. UniGroup admits that Connexion World Cargo Ltd. (“Connexion”) acted as one of Combustion Store’s agents in some capacity in arranging the shipment of two used aircraft engines. UniGroup presently lacks sufficient knowledge or information to either admit or deny the remaining allegations contained in Section IV.A. of the Complaint and, for that reason, denies them.

B. UniGroup admits that there is an undated Exhibit 1 attached to the Complaint, but presently lacks sufficient knowledge or information to either admit or deny the remaining allegations stated in Section IV.B. of the Complaint and, for that reason, denies them.

C. UniGroup presently lacks sufficient knowledge or information to either admit or deny the allegations stated in Section IV.C. of the Complaint and, for that reason, denies them.

D. UniGroup admits that it was engaged by Connexion to participate in the shipment of two used aircraft engines, as referred to in Section IV.A. UniGroup further admits that it holds an OTI license from the Commission. UniGroup admits that the Commission has regulations governing the activities of regulated OTIs, including those sections cited in Section IV.D. of the Complaint. To the extent Section IV.D. of the Complaint contains legal conclusions rather than averments of fact, UniGroup neither admits nor denies the same. To the extent there are additional factual averments in Section IV.D. of the Complaint, UniGroup presently lacks sufficient knowledge or information to either admit or deny those allegations and, for that reason, denies them.

E. UniGroup admits that a motor carrier, Southeastern Freight Lines, received two pieces of cargo on May 9, 2012. UniGroup denies the remaining allegations stated in Section IV.E. of the Complaint.

F. UniGroup presently lacks sufficient knowledge or information to either admit or deny the allegations stated in Section IV.F. of the Complaint and, for that reason, denies them.

G. UniGroup admits that there is an email from Erik Koistinen that contains the specific content referenced in Section IV.G. of the Complaint. All remaining allegations contained in Section IV.G. of the Complaint are denied.

H. UniGroup admits that Fred Parshley sent an email to Combustion Store on July 25, 2013, and that the email from Eric Koistinen to Fred Parshley referred to in Section

IV.G. of the Complaint was included therein. All remaining allegations contained in Section IV.H. of the Complaint are denied.

I. UniGroup admits that Exhibit 2 to the Complaint is a copy of a Master Bill of Lading generated by UniGroup and provided to Carotrans for informational purposes. That document speaks for itself and no response is required to allegations regarding its contents. UniGroup further admits that Exhibit 2 contains no mention of any log books. UniGroup denies all remaining allegations contained in Section IV.I. of the Complaint.

J. UniGroup admits the allegations stated in Section IV.J. of the Complaint.

K. Upon information and belief, UniGroup believes that Carotrans engaged MIQ Logistics, LLC (“MIQ”) to handle the inland transit of the shipment and that MIQ engaged Southeastern Freight Lines. UniGroup denies all remaining allegations contained in Section IV.K. of the Complaint.

L. The document attached to Combustion Store’s Complaint marked as “Exhibit 3” and referenced in Section IV.L. of the Complaint speaks for itself, and therefore no response is required to allegations regarding its contents. For further response, UniGroup denies that any portion of the document attached to Combustion Store’s Complaint marked as “Exhibit 3” and referenced in Section IV.L. of the Complaint indicates that there might have been an item or items with the shipment other than two aircraft engines. UniGroup further denies any characterization of any part of that document attached to the Complaint as Exhibit 3 as “strange” or as containing “alterations.”

M. UniGroup admits that the relevant shipping documents referred to in the Complaint “contain no reference to any log books accompanying the shipment.” UniGroup

presently lacks sufficient knowledge or information to either admit or deny the remaining allegations contained in Section IV.M. of the Complaint and, for that reason, denies them.

N. UniGroup presently lacks sufficient knowledge or information to either admit or deny the allegations contained in Section IV.N. of the Complaint and, for that reason, denies them.

O. UniGroup presently lacks sufficient knowledge or information to either admit or deny the allegations contained in Section IV.O. of the Complaint and, for that reason, denies them.

P. UniGroup admits that the documents referenced in Section IV.P. of the Complaint are attached to the Complaint as “Exhibit 4.” UniGroup is without knowledge regarding those documents’ authenticity or the accuracy of the information contained therein and, for that reason, denies the remaining allegations of Section IV.P. of the Complaint.

Q. UniGroup admits that its representatives were told that the shipment would include a logbook, but UniGroup denies that it controlled or was made aware of the manner in which the shipment was packaged and denies the allegation that it failed to exercise due diligence. UniGroup is without knowledge regarding either the authenticity or the accuracy of the information contained in the letters referenced in Section IV.Q. of the Complaint and, for that reason, denies any allegations regarding information contained in those letters. UniGroup denies the remaining allegations contained in Section IV.Q. of the Complaint.

R. To the extent that UniGroup provided services regulated by the Commission, it did so as an authorized OTI, pursuant to its Commission-issued license. The remaining allegations in Section IV.R. of the Complaint contain legal argument and assert legal conclusions rather than averments of fact and UniGroup therefore neither admits nor denies the

same. To the extent a response is required, UniGroup denies the remaining allegations in Section IV.R. of the Complaint.

S. UniGroup admits that it holds an OTI license issued by the Commission. The remaining allegations in Section IV.S. of the Complaint contain legal argument and assert legal conclusions rather than averments of fact and UniGroup therefore neither admits nor denies the same. To the extent any further response is required, UniGroup denies the allegations in Section IV.S. of the Complaint.

T. The allegations in Section IV.T. of the Complaint contain legal conclusions rather than averments of fact and UniGroup therefore neither admits nor denies the same. To the extent a response is required, UniGroup denies the allegations in Section IV.T. of the Complaint.

U. UniGroup admits that Exhibit 2 of the Complaint is a “Master Bill of Lading” generated by UniGroup and provided to Carotrans for informational purposes. The remaining allegations in Section IV.U. of the Complaint contain legal conclusions rather than averments of fact and UniGroup therefore neither admits nor denies the same. To the extent a response is required, UniGroup denies the allegations in Section IV.U. of the Complaint.

V. To the extent that UniGroup provided services regulated by the Commission, it acted solely as an Ocean Freight Forwarder. The first sentence of Section IV.V. of the Complaint contains legal conclusions rather than averments of fact and UniGroup therefore neither admits nor denies the same. UniGroup denies any remaining allegations in Section IV.V. of the Complaint.

W. The correspondence referenced in Section IV.W. of the Complaint speaks for itself and no response is required to allegations regarding its contents. UniGroup denies the remaining allegations contained in Section IV.W. of the Complaint.

X. UniGroup admits that the shipping documentation does not mention the log books. UniGroup presently lacks sufficient knowledge or information to either admit or deny the remaining allegations contained in the first sentence of Section IV.X. of the Complaint and, for that reason, denies them. The remaining allegations in Section IV.X. of the Complaint contain legal conclusions rather than averments of fact and UniGroup therefore neither admits nor denies the same.

Y. The first sentence of Section IV.Y. of the Complaint asserts legal conclusions rather than averments of fact and UniGroup therefore neither admits nor denies the same. UniGroup denies the remaining allegations of Section IV.Y. of the Complaint.

V. UniGroup denies the allegations contained in Section V of the Complaint. For further response, UniGroup denies violating 46 U.S.C. § 41102(c) and refers to the referenced statute in its entirety for its contents.

VI. UniGroup denies the allegations contained in Section VI of the Complaint.

VII. UniGroup denies that Combustion Store is entitled to any of the relief requested in Section VII of the Complaint.

VIII. UniGroup requests a hearing on this matter and further requests that the hearing be held in Atlanta, Georgia.

IX. Any allegation in Combustion Store's Complaint not specifically responded to above is hereby denied.

### **FIRST AFFIRMATIVE DEFENSE**

Combustion Store fails to state a claim upon which relief can be granted against UniGroup.

### **SECOND AFFIRMATIVE DEFENSE**

Combustion Store failed to preserve relevant evidence and permitted the spoliation of material evidence. Accordingly, Combustion Store's alleged right to recover is precluded or limited.

### **THIRD AFFIRMATIVE DEFENSE**

The Commission lacks subject matter jurisdiction in that this is a claim for cargo loss or damage governed by the Carriage of Goods by Sea Act.

### **FOURTH AFFIRMATIVE DEFENSE**

The Shipper's Letter of Instruction and the terms and conditions included therein represent the entire agreement between UniGroup and Combustion Store.

### **FIFTH AFFIRMATIVE DEFENSE**

To the extent Combustion Store is entitled to any recovery, a limitation of liability applies per the terms and conditions of service that are part of the Shipper's Letter of Instruction for this shipment.

### **SIXTH AFFIRMATIVE DEFENSE**

To the extent Combustion Store is entitled to any recovery, such recovery is barred by the reporting/claim filing requirements contained in the terms and conditions of service that are part of the Shipper's Letter of Instruction for this shipment.



#### **SEVENTH AFFIRMATIVE DEFENSE**

Combustion Store failed to file a timely claim and failed to file a legal action within the timeframe permitted by the terms and conditions of service that are part of the Shipper's Letter of Instruction for this shipment.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Combustion Store's claims are time-barred by applicable statutes of limitations.

#### **NINTH AFFIRMATIVE DEFENSE**

Combustion Store's allegations are barred by the doctrine of unclean hands.

#### **TENTH AFFIRMATIVE DEFENSE**

To the extent a log book accompanied the engines at origin, any claim related to the loss of log books is barred by the insufficiency of packing defense.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

The alleged Shipping Act violations by UniGroup are not the proximate cause of Combustion Store's alleged loss, and, in any event, Combustion Store suffered no damages as a result of the alleged acts or omissions of UniGroup.

#### **TWELFTH AFFIRMATIVE DEFENSE**

Any damages that Combustion Store has allegedly suffered have resulted, in whole or in part, from its own conduct and omissions and/or the conduct and omissions of persons or entities other than UniGroup.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

Combustion Store failed to mitigate its claimed damages, and, accordingly, Combustion Store's alleged right to recover is precluded or limited.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

Combustion Store fails to join certain parties in whose absence the Commission cannot accord complete relief among the existing parties.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

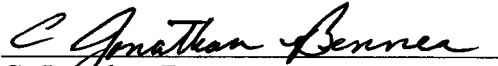
Federal statutes and regulations administered by the Federal Aviation Administration govern the obligations of owners of aircraft engines to convey record books related to those engines to purchasers or subsequent owners. These statutes and regulations are outside the subject matter jurisdiction of the Commission and preclude any attempt by Combustion Store to use the forum of the Commission to impose “practices or regulations” governing the shipment of record books related to commercial aircraft or aircraft components.

**WHEREFORE** UniGroup prays:

1. That Complainant Combustion Store take nothing from its Complaint, and that the Complaint be dismissed with prejudice;
2. That UniGroup be awarded its costs, expenses, and reasonable attorney’s fees; and
3. That UniGroup be awarded such other and further relief as the Court may deem just and proper.

UniGroup reserves the right to amend this Answer and Affirmative Defenses as a result of information learned during discovery or otherwise.

Respectfully submitted, this 19<sup>th</sup> day of October 2015, by:



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*Attorneys for Respondent,  
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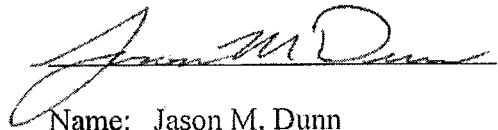


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**VERIFICATION OF UNIGROUP'S ANSWER AND AFFIRMATIVE DEFENSES**

I, Jason M. Dunn, declare that I am Vice President, Forwarding Solutions and authorized to verify that the foregoing Verified Answer and Affirmative Defenses is true to the best of my information and belief, and that the grounds of this belief as to all matters not upon my personal knowledge is information that has otherwise been provided to UniGroup Worldwide, Inc., the Respondent in this proceeding.

Pursuant to 28 U.S.C. § 1746(1), I verify under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.



Name: Jason M. Dunn

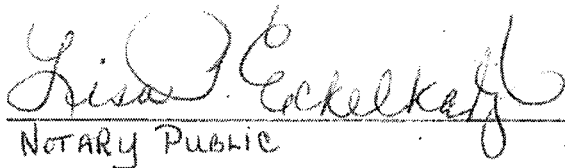
Title: Vice President  
Forwarding Solutions

Date: October 16, 2015

Notary seal:



LISA P. ECKELKAMP  
My Commission Expires  
August 20, 2017  
Franklin County  
Commission #13492217

  
NOTARY PUBLIC

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon counsel for Complainant (Sean C. Griffin and Richard D. Gluck) via electronic mail and by mailing a copy via the US Postal Service.

Dated at 2:00 pm this 19th day of October, 2015.



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M. Loughran Potter  
*For Respondent,*  
*UniGroup Worldwide, Inc.*